

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 SHERMAN DIVISION

4 UNITED STATES OF AMERICA DOCKET NO. 4:13CR176
5 VS. APRIL 24, 2015
6 ESMERALDA LOZADA 11:02 A.M.
7 BEAUMONT, TEXAS

8

9 VOLUME 1 OF 1, PAGES 1 THROUGH 9

10 REPORTER'S TRANSCRIPT OF SENTENCING HEARING

11 BEFORE THE HONORABLE MARCIA A. CRONE
12 UNITED STATES DISTRICT JUDGE

13

14 APPEARANCES:

15 FOR THE GOVERNMENT: LESLIE DAVIS
16 U.S. ATTORNEY'S OFFICE
17 101 EAST PARK BOULEVARD
 SUITE 500
 PLANO, TEXAS 75074

18 FOR THE DEFENDANT: DENISE BENSON
19 FEDERAL PUBLIC DEFENDER
20 600 EAST TAYLOR
 SUITE 4000
 SHERMAN, TEXAS 75090

21 COURT REPORTER: TONYA B. JACKSON, RPR-CRR
22 FEDERAL OFFICIAL REPORTER
23 300 WILLOW, SUITE 239
 BEAUMONT, TEXAS 77701

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25 PROCEEDINGS REPORTED USING COMPUTERIZED STENOTYPE;
TRANSCRIPT PRODUCED VIA COMPUTER-AIDED TRANSCRIPTION.

1 [OPEN COURT, DEFENDANT PRESENT VIA
2 VIDEOCONFERENCE.]

3 THE COURT: All right. This is Case
4 No. 4:13CR176, Defendant 3, *United States of America*
11:02AM 5 *versus Esmeralda Lozada.*

6 Are you ready to proceed?

7 MS. DAVIS: Yes, your Honor. Leslie Davis for
8 the government.

9 MS. BENSON: Denise Benson for Mrs. Esmeralda
11:02AM 10 Lozada. This is actually Robert Arrambide's case, but
11 she's agreed to consent to have me represent her during
12 sentencing.

13 THE COURT: All right. Has she signed the
14 video waiver form?

15 MS. BENSON: Yes, she has, your Honor.

16 THE COURT: Okay. Have counsel and the
17 defendant read and discussed the presentence report,
18 including any revisions?

19 MS. BENSON: Yes, we have, your Honor.

11:02AM 20 THE COURT: And has counsel fully explained
21 the report to the defendant?

22 MS. BENSON: Yes, I have, your Honor.

23 THE COURT: Ms. Lozada, do you fully
24 understand the presentence report?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Does counsel or defendant wish to
2 make any comments, additions, or corrections to the
3 report?

4 MS. BENSON: No, your Honor.

11:03AM 5 THE COURT: And, Ms. Lozada, does the report
6 adequately cover your background?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Has the government read the
9 report; and does it wish to make any comments, additions,
11:03AM 10 or corrections?

11 MS. DAVIS: Yes, your Honor, we have read the
12 report; and we do not have any comments, additions, or
13 corrections.

14 THE COURT: And no objections were filed; is
11:03AM 15 that correct?

16 MS. BENSON: That's correct, your Honor.

17 MS. DAVIS: Yes, your Honor.

18 THE COURT: To the extent the court previously
19 deferred acceptance of the plea agreement, it is now
11:03AM 20 accepted.

21 The court finds that the information contained
22 in the presentence report has sufficient indicia of
23 reliability to support its probable accuracy. The court
24 adopts the factual findings, undisputed facts, and
11:03AM 25 guideline applications in the presentence report.

1 Based upon a preponderance of the evidence
2 presented and the facts in the report, while viewing the
3 Sentencing Guidelines as advisory, the court concludes
4 that the total offense level is 17, the criminal history
11:03AM 5 level is I, which provides for an advisory guideline
6 range of 24 to 30 months.

7 Does defendant's counsel wish to make any
8 remarks on behalf of the defendant?

9 MS. BENSON: Yes, your Honor. Ms. Lozada
11:04AM 10 would ask the court to impose the recommended sentence in
11 the presentence report of 24 months. This is her first
12 contact of any kind with the criminal justice system.
13 Her role in this was that she was a receptionist at the
14 doctor's office. She has admitted her culpability. She
15 has been cooperating since day one. I believe she's
16 scheduled to testify at the trial when it occurs.

17 And, so, based on all those circumstances, we
18 would ask that you sentence her to the low end of the
19 guidelines. And she would also ask the court to allow
11:04AM 20 her to voluntarily surrender.

21 THE COURT: Okay. Ms. Lozada, would you like
22 to make a statement?

23 THE DEFENDANT: Just I'm sorry for what I did,
24 and it will never happen again.

11:05AM 25 THE COURT: Okay. And does the attorney for

1 the government wish to make any remarks?

2 MS. DAVIS: Yes, your Honor. We concur with
3 Ms. Benson. Ms. Lozada has been cooperative from the
4 beginning. She will be a necessary witness. I believe
11:05AM 5 the current trial date is October 5th, 2015, against the
6 three remaining co-defendants.

7 We also concur in the recommendation that she
8 be sentenced to the low end of the range.

9 THE COURT: Does counsel know of any reason
11:05AM 10 why sentence should not be imposed at this time?

11 MS. BENSON: Not from the defendant, your
12 Honor.

13 THE COURT: Pursuant to the Sentencing Reform
14 Act of 1984, having considered the factors noted in
11:05AM 15 18 U.S.C., Section 3553(a), and after having consulted
16 the advisory Sentencing Guidelines, it is the judgment
17 of the court that the defendant Esmeralda Lozada is
18 hereby committed to the custody of the Bureau of Prisons
19 to be imprisoned for 24 months on Count 1 of the
20 indictment.

21 The court finds the defendant does not have
22 the ability to pay a fine. The court will waive the fine
23 in this case.

24 It is ordered the defendant shall pay the
11:05AM 25 United States a special assessment of \$100 which is due

1 and payable immediately. Any and all financial penalties
2 shall be made payable by cashier's check or money order
3 made out to the United States District Court and
4 forwarded to the Fine and Restitution Section, U.S.
11:06AM 5 Courts, 1910 E. Southeast Loop 323, No. 287, Tyler, Texas
6 75701.

7 Upon release from imprisonment, the defendant
8 shall be on supervised release for a term of 1 year.
9 Within 72 hours of release from the custody of the Bureau
11:06AM 10 of Prisons, the defendant shall report in person to the
11 probation office in the district to which the defendant
12 is released.

13 The defendant shall not commit another
14 federal, state, or local crime and shall comply with the
11:06AM 15 standard conditions that have been adopted by this court.
16 In addition, the defendant shall comply with the
17 mandatory and special conditions set forth in the
18 defendant's presentence report.

19 The court finds this to be a reasonable
11:06AM 20 sentence in view of the nature and circumstances of the
21 offense entailing the defendant's participation in a
22 conspiracy to distribute controlled substances; her
23 working as a receptionist for a physician for over
24 five years whom she knew unlawfully sold prescriptions
11:06AM 25 for hydrocodone, Alprazolam, and promethazine with

1 codeine for cash; her furthering this unlawful activity
2 by falsifying patient charts by writing on medical forms
3 that they all had the same symptoms of anxiety, back
4 pains, and coughing; and her relatively minor role in the
11:07AM 5 offense. It will serve as just punishment, promote
6 respect for the law, and deter future violations of the
7 law.

8 You have a right to appeal your conviction if
9 you believe that your guilty plea was somehow unlawful or
11:07AM 10 involuntary or if there was some other fundamental defect
11 in the proceedings that was not waived by your guilty
12 plea. You have a statutory right to appeal your sentence
13 under certain circumstances, particularly if you think
14 the sentence is contrary to law.

11:07AM 15 A defendant, however, may waive those rights
16 as part of a plea agreement and you've entered into a
17 plea agreement which waives certain rights to appeal your
18 conviction and sentence.

19 With the exception of the reservation of the
11:07AM 20 right to appeal on specified grounds set forth in the
21 plea agreement, you've waived any appeal, including
22 collateral appeal, of any error which may have occurred
23 surrounding the substance, procedure, or form of the
24 conviction and sentence in this case. Such waivers are
11:07AM 25 generally enforceable; but if you believe the waiver is

1 unenforceable, you can present that theory to the
2 appellate court.

3 With few exceptions any notice of appeal must
4 be filed within 14 days of judgment being entered in your
11:07AM 5 case. If you're unable to pay the cost of an appeal, you
6 may apply for leave to appeal *in forma pauperis*. If you
7 so request, the clerk of the court will prepare and file
8 a notice of appeal on your behalf.

9 The presentence report is made part of the
11:08AM 10 record and is placed under seal except counsel for the
11 government and defense may have access to it for purposes
12 of appeal.

13 Were there any other counts?

14 MS. DAVIS: No, your Honor.

11:08AM 15 THE COURT: And I'll let her surrender
16 two weeks from today, which would --

17 What date would that be, Ms. Hedges?

18 COURTRoom DEPUTY: May 8th.

19 THE COURT: Okay. May 8th.

11:08AM 20 And is there a particular facility you wish to
21 request?

22 MS. BENSON: Carswell would be the closest,
23 your Honor.

24 THE COURT: All right. I'll recommend
11:08AM 25 Carswell.

1 If there's nothing further, then you're
2 excused.

3 (Proceedings adjourned, 11:08 a.m.)

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6 COURT REPORTER'S CERTIFICATION

7 I HEREBY CERTIFY THAT ON THIS DATE, JULY 7,
8 2016, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
9 RECORD OF PROCEEDINGS.

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/s/
TONYA JACKSON, RPR-CRR

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